

1 KAMALA D. HARRIS
Attorney General of California
2 DIANN SOKOLOFF
Supervising Deputy Attorney General
3 SUSANA A. GONZALES
Deputy Attorney General
4 State Bar No. 253027
1515 Clay Street, 20th Floor
5 P.O. Box 70550
Oakland, CA 94612-0550
6 Telephone: (510) 622-2221
Facsimile: (510) 622-2270
7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-695**

13 **ALICIA M. FERNANDEZ, a.k.a. ALICIA**
14 **MARTA FERNANDEZ**
950 Cabrillo Street, #10
San Francisco, CA 94118
Registered Nurse License No. 600621

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

- 19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.
22 2. On or about June 17, 2002, the Board of Registered Nursing issued Registered Nurse
23 License Number 600621 to Alicia M. Fernandez, also known as Alicia Marta Fernandez
24 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
25 the charges brought in this Accusation and will expire on February 29, 2012, unless renewed.
26
27
28

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 2811, subdivision (b), of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

7. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board/Registrar/Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

8. Section 492 of the Code states:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest.

1 "This section shall not be construed to apply to any drug diversion program operated by any
2 agency established under Division 2 (commencing with Section 500) of this code, or any
3 initiative act referred to in that division."

4 STATUTORY PROVISIONS

5 9. Section 2761 of the Code states:

6 "The board may take disciplinary action against a certified or licensed nurse or deny an
7 application for a certificate or license for any of the following:

8 "(a) Unprofessional conduct..."

9 10. California Code of Regulations, title 16, section 1444, states, in pertinent part:

10 "A conviction or act shall be considered to be substantially related to the qualifications,
11 functions or duties of a registered nurse if to a substantial degree it evidences the present or
12 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
13 safety, or welfare. Such convictions or acts shall include but not be limited to the following:

14 ...

15 "(c) Theft, dishonesty, fraud, or deceit."

16 COST RECOVERY

17 11. Section 125.3 of the Code provides, in pertinent part, that the Board, Registrar, or
18 Director may request the administrative law judge to direct a licentiate found to have committed a
19 violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the
20 investigation and enforcement of the case.

21 CAUSE FOR DISCIPLINE

22 (Unprofessional Conduct)

(Bus. & Prof. Code § 2761, subd. (a))

23 12. Respondent has subjected her registered nurse license to disciplinary action under
24 Code section 2761, subdivision (a), in that she stole the personal property of a co-worker while
25 working as a registered nurse at Contra Costa County Regional Medical Center. Under California
26 Code of Regulations, title 16, section 1444, subdivision (c), this act of theft is substantially related
27 to the qualifications, functions or duties of a registered nurse. The circumstances are as follows:
28

1 13. On or about November 13, 2008, a Deputy Sheriff for the Contra Costa County
2 Sheriff's Department was working at Contra Costa County Regional Medical Center in Martinez,
3 California. The deputy was called to the emergency room (ER) at approximately 10:50 p.m. The
4 charge nurse in the ER explained to the deputy that Respondent was suspected of taking money
5 out of another nurse's purse that evening. According to the charge nurse, management had
6 suspected Respondent in previous employee thefts, however there was insufficient evidence to
7 prove that Respondent had committed those thefts. V1, the nurse whose money had been stolen,
8 explained to the deputy that earlier that evening, she placed her purse next to the desk in the triage
9 office where Respondent was working. When V1 walked back to the triage office a few minutes
10 later, she discovered that her purse had been moved and the money that had been inside her purse
11 was gone. According to V1, Respondent was the only person in the triage office during that time.
12 V1 told the deputy that she was willing to sign a citizen's arrest form against Respondent.

13 14. The ER charge nurse subsequently asked Respondent to follow her and the deputy to
14 an office located in the back of the ER. While the charge nurse, Respondent, and the deputy were
15 walking down a hallway towards the office, another nurse, W1, observed Respondent throw
16 something out of her left hand and into a medical cart in the hallway. W1 approached the deputy
17 and reported what she had just observed. The deputy walked to the medical cart with W1 and
18 retrieved a bundle of cash that was wrapped around a Bank of America Visa Debit card. The
19 debit card bore V1's name. The deputy asked V1 how much cash had been in her wallet, and V1
20 stated that her wallet had contained \$31. The cash retrieved from the medical cart amounted to
21 exactly \$31. V1 then confirmed that the Visa card retrieved from the medical cart belonged to
22 her. V1 filled out and signed a citizen's arrest form, placing Respondent under arrest for petty
23 theft in violation of California Penal Code section 488. The deputy placed handcuffs on
24 Respondent and Respondent stated "shit, I'm stupid." After waiving her Miranda rights,
25 Respondent told the deputy that she took the money from V1's purse because she needed gas
26 money, was broke, and was tired of asking people for money.

27 15. Respondent further admitted her conduct on or about June 2, 2010, in a criminal
28 matter entitled *The People of the State of California v. Alicia Marta Fernandez*, Contra Costa

1 County Superior Court Case Number 143190-7, when she agreed to an Adult Pre-Trial Diversion
2 Order (Diversion Order), which placed her in a diversion program for 12 months. Pursuant to the
3 Diversion Order, Respondent was required to pay an administrative fee and fine, complete a
4 Mental Health Counseling Program, pay victim restitution, and stay away from V1.

5 PRAYER

6 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
7 Accusation, and that following the hearing, the Board of Registered Nursing issue a decision:

- 8 1. Revoking or suspending Registered Nurse License Number 600621, issued to Alicia
9 M. Fernandez, also known as Alicia Marta Fernandez;
- 10 2. Ordering Alicia M. Fernandez, also known as Alicia Marta Fernandez to pay the
11 Board of Registered Nursing the reasonable costs of the investigation and enforcement of this
12 case, pursuant to Business and Professions Code section 125.3;
- 13 3. Taking such other and further action as deemed necessary and proper.
- 14
- 15

16 DATED: _____

2/7/11

17 *Louise R. Bailey*
18 LOUISE R. BAILEY, M.ED., RN
19 Executive Officer
20 Board of Registered Nursing
21 Department of Consumer Affairs
22 State of California
23 Complainant

24 SF2010900526
25 90174689.doc

26

27

28